AZMI ALANG AHMAD v. SITI WAKI'AH MOHD NOR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
GAN TECHIONG JC
[CIVIL SUIT NO: WA-21NCvC-109-10-2022]
26 APRIL 2024

Abstract – *Since it is the intention of Parliament in legislating s. 77 of the Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUA') to provide immunity to officers of the competent authority or the relevant enforcement agency who perform their duties in good faith in enforcing the provisions of AMLATFPUA, civil suits naming such an officer either personally or in his/her official capacity ought to be struck out in limine unless it is proven that there is lack of good faith on the part of that officer. General averments of misfeasance are insufficient to justify naming an investigating officer as a co-defendant in a suit.*

CIVIL PROCEDURE: *Striking out – Application for – Applicant sued in official capacity as investigation officer in enforcement agency – Whether applicant committed tort of misfeasance – Whether applicant had legal immunity pursuant to s. 87 of Central Bank of Malaysia Act 2009 – Whether applicant protected under s. 77 of Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 – Whether there was reasonable cause of action against applicant – Whether action frivolous, vexatious and abuse of court process – Whether suit ought to be struck out in limine – Rules of Court 2012, O. 18 r. 19*

TORT: *Misfeasance in public office – Suit – Immunity – Applicant sued in official capacity as investigation officer in enforcement agency – Whether applicant committed tort of misfeasance – Whether applicant had legal immunity pursuant to s. 87 of Central Bank of Malaysia Act 2009 – Whether applicant protected under s. 77 of Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 – Whether there was reasonable cause of action against applicant – Whether action frivolous, vexatious and abuse of court process – Whether suit ought to be struck out in limine – Rules of Court 2012, O. 18 r. 19*

The plaintiff filed this civil suit for himself and also as a class action on behalf of others, who were allegedly persons who had deposited money with MGSB Bhd ('MGSB'). In essence, the plaintiff and his comrades were suing the defendants in this civil suit to try and recover the monies that they had respectively deposited with the said company. The plaintiff and his comrades, in claiming that they were victims of scams, submitted that the MGSB directors had allegedly used misrepresentation about three projects to induce the plaintiff and his comrades to invest in MGSB. The plaintiff and

his comrades pleaded that there were four bank accounts operated by MGSB and they had jointly deposited a total of RM4,249,000 into those accounts. A raid was conducted on the premises of the MGSB led by Bank Negara Malaysia ('second defendant') and assisted by, *inter alia*, officers from Polis Diraja Malaysia (fifth defendant). Following the said raid, the directors of MGSB were arrested and remanded for being involved in taking money deposits illegally. The plaintiff further pleaded that 54 bank accounts of MGSB and cash in Ringgit Malaysia and foreign currencies were seized under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUA'). The plaintiff and his comrades pleaded that they were aggrieved by the decision of the defendants in releasing part of the seized funds and submitted that: (i) the defendants jointly and/or separately had deliberately abused the power vested in them and/or committed torts of misfeasance as public servants; (ii) the defendants jointly and/or separately, knew and were fully aware, at all material times, that as civil servants and enforcement officers involved in the joint raid operation, they have a responsibility to safeguard and protect the money and/or confiscated assets belonging to MGSB. The first defendant was an investigation officer in the Financial Intelligence and Enforcement Department of the second defendant and was sued in her official capacity. The first defendant filed a striking out application (encl. 38) on these grounds, *inter alia,* (i) that she had legal immunity pursuant to s. 87 of the Central Bank of Malaysia Act 2009 ('CBM Act'); (ii) that she was protected under s. 77 of the AMLATFPUA as she had carried out her duties according to the orders that were received by her; (iii) the plaintiff's action against the first defendant did not reveal any reasonable cause of action because the first defendant was only an officer of the second defendant; and (iv) the plaintiff's action against the first defendant was frivolous and vexatious as well as an abuse of the court process.

Held (allowing encl. 38):

(1) For the purpose of determining whether the plaintiff and his comrades have a sustainable claim against the first defendant, it was not necessary to delve into the details of their allegations. It was only necessary to determine if they had pleaded facts and adduced evidence in the plaintiff's affidavit in reply that would entitle them to name the first defendant Siti Waki'ah binti Mohd Nor as a defendant in this civil suit – since they have named Bank Negara Malaysia as the second defendant. (para 14)

(2) There was no causal link between the alleged loss of the plaintiff and his comrades with the first defendant. The first defendant did not receive any money from the plaintiff and his comrades. They had willingly paid money to MGSB. The first defendant was only carrying out her duty in investigating MGSB's activities by following instructions from the second defendant and/or the Public Prosecutor. (para 15)

(3) The first defendant, as an officer and employee of Bank Negara, was covered by the legal immunity conferred upon all officers and employees of Bank Negara Malaysia by s. 87 of the CBM Act. Since the seizure/freezing of cash and bank accounts was made under the AMLATFPUA, the first defendant was just one of the officers of the competent authority or the relevant enforcement agency that were involved in the multi-agency raid on MGSB. As it was an enforcement action under AMLATFPUA, s. 77 of the AMLATFPUA was another provision of the law that the first defendant was entitled to rely on as an immunity umbrella. (paras 16-18)

(4) Though both s. 87 of the CBM Act and s. 77 of the AMLATFPUA contain a proviso that the first defendant must have acted or omitted to act in good faith for immunity to be applicable, there was no evidence about the first defendant's conduct as an investigating officer involved in the raid and investigation of MGSB Berhad, as having lacked good faith. She appeared to have been named as a co-defendant simply because she was the investigating officer. General averments of misfeasance are insufficient to justify naming an investigating officer as a co-defendant with her department. (para 19)

(5) Immunity conferred by s. 77 of the AMLATFPUA to officers of the competent authority or the relevant enforcement agency that were involved in enforcing AMLATFPUA, is wider than that under s. 87 of the CBM Act, in that the said s. 77 expressly prohibits the suing of any officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity, in pursuance of or in execution of, or intended execution of the provisions of the AMLATFPUA. (para 20)

(6) Since it was the intention of Parliament in legislating s. 77 of the AMLATFPUA to provide immunity to officers of the competent authority or the relevant enforcement agency who perform their duties in good faith in enforcing the provisions of AMLATFPUA, civil suits naming such an officer either personally or in his/her financial capacity, ought to be struck out *in limine* unless the plaintiff was able to demonstrate any lack of good faith on the part of that officer. In cases where the pleadings and affidavit evidence show that the officer had been frivolously named as a co-defendant – such as in this case – the court ought to give effect to the provisions of s. 77 of the AMLATFPUA by exercising its discretionary powers under O. 18 r. 19 of the Rules of Court 2012 instead of allowing the officer to be dragged through a lengthy trial. (para 21)

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, s. 77

Central Bank of Malaysia Act 2009, s. 87

Rules of Court 2012, O. 18 r. 19

A *For the plaintiff - Fatima Zulaikha Ahmad Bashri; M/s Faizal Rahman & Co*
For the 1st & 2nd defendants - Kevin Sathiaseelan, Leng Wie Mun & Sovitra Sukahut; M/s Kevin & Co
For the 3rd-7th defendants - Siti Syakimah Ibrahim

Reported by Suhainah Wahiduddin

B

JUDGMENT

Gan Techiong JC:

Introduction

C **[1]** There were three striking-out applications filed in this civil suit, one of which was the one filed by the first defendant. The first defendant works for the second defendant, Bank Negara Malaysia, and had filed her striking-out application (encl. 38) separately from the second defendant's application (encl. 40). The third, fourth, fifth, sixth and seventh defendants filed a joint application to strike out the plaintiff's to strike out his claim. The subject matter of my grounds here is just the first defendant's application (encl. 38).

D

[2] The first defendant, one Siti Waki'ah binti Mohd Nor, is an Investigation Officer in the Financial Intelligence and Enforcement Department of the second defendant, *ie*, Bank Negara Malaysia. She was sued in her official capacity. I decided to allow the first defendant's application (encl. 38) because it was plain and obvious that the plaintiffs' claim against her was frivolous, vexatious, and an abuse of process of court.

E

Background Facts

F **[3]** The plaintiff has filed this civil suit for himself and also as a class action on behalf of persons named in a list marked as "Lampiran A", who are allegedly persons who had deposited money with MGSB Berhad. "Lampiran A" contained 72 names, with the plaintiff's name listed first. The plaintiff and those 71 other persons shall hereinafter be referred to as "the plaintiff and his comrades".

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[4] In essence, the plaintiff and his comrades are suing the defendants in this civil suit to try to recover the monies that they had respectively deposited with a company by the name of MGSB Berhad. From the narrative in the lengthy statement of claim, the plaintiff and his comrades are victims of a scam.

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The Plaintiff's Claim Against The Defendants

[5] The plaintiff has amended his lengthy statement of claim twice. His re-amended statement of claim contains 85 paragraphs. The narrative is about a person by the name of Hisyamuddin, presumably the mastermind, being a director of the said MGSB Berhad together with Nur Ain Aliana binti Mat Azmi, Ahmad Zalimi bin Mohd Ali and Halimatun Saadiah binti Che Omar.

I

[6] It was further pleaded by the plaintiff that the said Hisyamuddin and other directors of the said MGSB Berhad had allegedly used misrepresentation about three projects to induce the plaintiff and his comrades to invest in MGSB Berhad. Those three investment projects were pleaded to have been for the import and export of coconuts, a development project in Pulau Sirandah, Indonesia and a Go Public Initial Public Offering in Indonesia. The plaintiff and his comrades pleaded that there were four bank accounts operated by MGSB and they had jointly deposited a total of RM4,249,000 into those accounts.

[7] The first event of concern to the plaintiff and his comrades occurred on 15 September 2017 when a raid was conducted on the premises of the said MGSB Berhad following some reports and preliminary investigation. The said raid was led by the second defendant, Bank Negara Malaysia, and assisted by officers from the fifth defendant Polis DiRaja Malaysia, the National Revenue Recovery Enforcement Team ("NRRET") under the Attorney-General's Chambers and the Companies Commission.

[8] Following the said raid, those four directors of MGSB Berhad were arrested and remanded for being involved in taking money deposits illegally. The plaintiff further pleaded that 54 bank accounts of MGSB Berhad and cash in Ringgit Malaysia and foreign currencies were seized under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

[9] The plaintiff and his comrades pleaded that they were aggrieved by the decision of the defendants in releasing part of the seized funds. Their pleadings could be summarised as follows:

(i) that the defendants jointly and/or separately have deliberately abused the power vested in them and/or committed torts of misfeasance as public servants; and

(ii) the defendants, jointly and/or separately, knew and were fully aware, at all material times, that as civil servants and enforcement officers involved in the joint raid operation, they have a responsibility to safeguard and protect the money and/or confiscated assets belonging to MGSB Limited.

[10] The prayers of the plaintiff, *inter alia*, are for:

(i) a declaration that the defendants jointly and/or severally committed the tort of misfeasance;

(ii) a declaration that the defendants jointly and/or severally breached their statutory duty and were negligent;

(iii) an order for the defendants jointly and/or severally to provide written clarifications and explanations with all related documents regarding the position and actual amount of money seized and/or money in the

account belonging to MGSB and/or any money during the joint raid conducted by the defendants against MGSB, within 21 days from the date the judgment is given;

(iv) an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM5,110,800 and/or any other amount determined by the court to the plaintiff and people in the class action, through solicitors Messrs Faizal Rahman & Co;

(v) in the alternative, an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM4,249,000 which is the capital paid by the plaintiff and people in the class action and/or any amount other determined by the court to the plaintiff and people in the class action, through the solicitors Messrs Faizal Rahman & Co;

(vi) in the alternative, an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM851,000 which is the profit promised to the plaintiff and/or any other amount determined by the court to the plaintiff and the people in the class action through the solicitors Messrs Faizal Rahman & Co;

(vii) general damages;

(viii) aggravated damages;

(ix) exemplary damages and/or punitive damages; and

(x) interest at 5% p.a. on damages to be awarded from.

The First Defendant's Striking-Out Application

[11] The grounds stated in support of the first defendant's application were as follows:

(i) the first defendant has legal immunity pursuant to s. 87 of the Central Bank of Malaysia Act 2009, where no action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against any officer or employee of the second defendant (Bank Negara Malaysia);

(ii) the first defendant is also protected under s. 77 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 for the same reason, that is, the first defendant has carried out her duties according to the orders that were received by her;

(iii) the plaintiff's action against the first defendant does not reveal any reasonable cause of action because the first defendant is only an officer of the second defendant who carries out her duties according to the instructions of the second defendant and also based on the procedure and provisions of the law;

(iv) the plaintiff's action against the first defendant is humiliating, frivolous and vexatious because the plaintiff should not apply for private legal remedies regarding the first defendant's decision, which was implemented based on statutory powers; and

(v) the plaintiff's action is an abuse of court process because the plaintiff has failed to obtain any compensation from Civil Suit No: WA-22NCVC-562-09-2018 which he filed against MGSB Berhad and its directors.

[12] As for the plaintiff's allegations about the amount of money frozen, the first defendant disclosed as follows:

(i) the sum was found in the accounts of MGSB Berhad and related entities that were frozen was RM701,054 and there was never any sum of RM56,468,498.29 as claimed by the plaintiff. The amount of RM56,468,498.29 stated in the charge sheet against MGSB Berhad is based on investigation records and not the amount found or seized. After further investigation, it was found that only RM8,943.61 in two bank accounts out of the RM701,054 belonging to MGSB were the "barang kes", *ie*, to be tendered as the exhibits for the AMLATFPUA and predicate case charges;

(ii) from the date when the bank accounts of MGSB Berhad and its related entities were frozen on 15 September 2017 till 22 August 2019, which was the date when MGSB Berhad and its directors pleaded guilty in the Kajang Sessions Court, the relevant "barang kes" continued to be frozen, *ie*, not released; and

(iii) the release of the money in MGSB Berhad's bank accounts was based on the provisions of the law and following the instructions of the Attorney General's Chambers after investigation has been carried out. It was not in conflict with any investigation or action of the fifth defendant as alleged by the plaintiff.

Analysis Of The Law And Facts

[13] Various allegations were pleaded against the defendants but for the purpose of sustaining his claim against the first defendant, the plaintiff must be able to justify naming the first defendant Siti Waki'ah binti Mohd Nor as a defendant in this civil suit.

[14] For the purpose of determining whether the plaintiff and his comrades have a sustainable claim against the first defendant, it is not necessary to delve into the details of their allegations. It is only necessary to determine if they have pleaded facts and adduced evidence in the plaintiff's affidavit-in-reply that would entitle them to name the first defendant Siti Waki'ah binti Mohd Nor as a defendant in this civil suit – since they have named Bank Negara Malaysia as the second defendant.

[15] I agree with the submission of learned counsel for the first defendant that there is no causal link between the alleged loss of the plaintiff and his comrades with the first defendant. She did not receive any money from the plaintiff and his comrades. They had willingly paid money to MGSB Berhad and the said Hisyamuddin. The first defendant was only carrying out her duty in investigating MGSB Berhad's activities by following instructions from the second defendant and/or the Public Prosecutor.

[16] There is no doubt that the first defendant, as an officer and employee of Bank Negara, is covered by the legal immunity conferred upon all officers and employees of Bank Negara Malaysia by s. 87 of the Central Bank of Malaysia Act 2009, which reads as follows:

> **No action, suit,** prosecution or other proceeding **shall lie or be brought,** instituted, or maintained in any court or before any other authority **against**
>
> (a) **any officer or employee of the Bank;**
>
> (b) any person lawfully acting on behalf of the Bank, or on behalf of any such officer or employee, in his capacity as a person acting on such behalf; or
>
> (c) any person appointed pursuant to this Act,
>
> **for or on account of,** or in respect of, **any act done** or statement made or **omitted to be done or made,** or purporting to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, any order in writing, direction, instruction, notice or other thing issued under this Act:
>
> Provided that **such act or such statement was done or made, or was omitted to be done or made, in good faith.** (emphasis added)

[17] Since the seizure/freezing of cash and bank accounts was made under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, the first defendant was, as a matter of undisputed fact, just one of the officers of the competent authority or the relevant enforcement agency that were involved in the multi-agency raid on MGSB Berhad.

[18] As it was an enforcement action under AMLATFPUA, it means that s. 77 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFPUA") is another provision of the law that the first defendant is entitled to rely on as an immunity umbrella. It reads:

> *No action, suit,* prosecution or other proceedings *shall lie or be brought,* instituted, or maintained *in any court* or before any other authority *against:*
>
> (a) the competent authority or the relevant enforcement agency;

(b) *any director or officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity;* or

(c) …,

for or on account of, or in respect of, any act done or statement made oromitted to be done or made, or purporting to be done or made or *omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act* or any order in writing, direction, instruction or other thing issued under this Act *if such act or statement was done* or made, or *was omitted to be done* or made, *in good faith.* (emphasis added)

[19] Though both s. 87 of the Central Bank of Malaysia Act 2009 and s. 77 of AMLATFPUA contain a proviso that the first defendant must have acted or omitted to act, in good faith for immunity to be applicable, there was no evidence about the first defendant's conduct as an investigating officer involved in the raid and investigation of MGSB Berhad, as having lacked good faith. She appeared to have been named as a co-defendant simply because she was the investigating officer. General averments of misfeasance are insufficient to justify naming an investigating officer as a co-defendant with her department.

[20] I find that the immunity conferred by s. 77 of AMLATFPUA, to officers of the competent authority or the relevant enforcement agency that were involved in enforcing AMLATFPUA, is wider than that under s. 87 of the Central Bank of Malaysia Act 2009, in that the said s. 77 expressly prohibits the suing of any officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity, in pursuance of or in execution of, or intended execution of the provisions of AMLATFPUA.

Conclusion

[21] Since it was the intention of Parliament in legislating s. 77 of AMLATFPUA to provide immunity to officers of the competent authority or the relevant enforcement agency who perform their duties in good faith in enforcing the provisions of AMLATFPUA, I am of the view that civil suits naming such an officer either personally or in his/her official capacity, ought to be struck out *in limine* unless the plaintiff is able to demonstrate any lack of good faith on the part of that officer. In cases where the pleadings and affidavit evidence show that the officer had been frivolously named as a co-defendant – such as in this case – the court ought to give effect to the provisions of s. 77 of AMLATFPUA by exercising its discretionary powers under O. 18 r. 19 Rules of Court 2012 instead of allowing the officer to be dragged through a lengthy trial.

[22] By reason of the facts and law highlighted above, I decided to allow the first defendant's striking-out application (encl. 38) to strike out the claim against her.